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May 13, 1994

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Federal Communications Commission  
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In the Matter of Computer III Remand Proceedings Bell  
Operating Company Safeguards and Tier I Local Exchange  
Company Safeguards - CC Docket No. 90-263 90-623

Application of Open Network Architecture and  
Nondiscrimination Safeguards to GTE Corporation  
- CC Docket No. 92-256

Dear Secretary Caton:

Enclosed please find an original and nine copies of the  
Reply Comments of the New York State Department of Public Service  
in the above captioned proceeding.

Sincerely,

Penny Rubin  
Assistant Counsel

No. of Copies rec'd  
List ABCDE

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
Computer III Remand Proceedings	)	CC Docket No. 90-263
Bell Operating Company Safeguards	)	
and Tier I Local Exchange Company	)	
Safeguards	)	
	)	
Application of Open Network	)	CC Docket No. 92-256 ✓
Architecture and	)	
Nondiscrimination Safeguards to	)	
GTE Corporation	)	

**REPLY COMMENTS OF THE  
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE**

**Introduction**

The New York State Department of Public Service (NYDPS) submits these reply comments in response to the Public Notice (hereinafter "Notice") released March 10, 1994 requesting additional comment on the rules governing telephone companies' use of Customer Proprietary Network Information (CPNI).

In the Notice, the Commission asks whether changes are required to the existing CPNI rules in order to ensure a proper balance among customer's privacy interests and competitive equity and efficiency, given the number of recently proposed and completed alliances, acquisitions and mergers by telephone companies with non-telephone company partners. In reassessing its CPNI rules, the Commission seeks comment specifically on the issue of residential and small business customers' CPNI-related privacy expectations, and on whether the rules should apply to

LECs other than the BOCs and GTE.

**I. CPNI Privacy Protections Should Be Extended to All LEC Customers**

It continues to be the view of the NYDPS that the Commission's current CPNI safeguards do not fully protect customers' privacy. We agree with NYNEX that as a general principle, protections deemed necessary to protect the privacy of customers' information must apply equally to all providers.<sup>1</sup>

We have previously urged the Commission, and we do so again in these reply comments, to strengthen its CPNI protections, as New York has done. We recommend that all local exchange carriers be required to restrict access to any customer's CPNI -- irrespective of the number of lines to which that customer subscribes -- to the extent that such information is not otherwise publicly available, unless the customer authorizes its release. The New York Public Service Commission (NYPSC) has incorporated this rule as part of its ONA principles<sup>2</sup> because it is vital to a level playing field and because of the State's interest in protecting the privacy of consumers.

Since the FCC last addressed its CPNI rules in 1991, the NYPSC also has adopted telecommunications privacy principles

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<sup>1</sup> See Comments of NYNEX, p. 9.

<sup>2</sup> Case 88-C-004, Opinion and Order Resolving ONA Issues and Adopting A Statement of ONA Principles. Opinion No. 89-28 (Issued September 11, 1989).

associated with the provision of intrastate services.<sup>3</sup> One of those principles explicitly states:

Unless a caller grants informed consent, information about the caller generated by his or her use of a telecommunications service should be used only in connection with rendering or billing for that service or for other goods or services requested by the called party and may not be made otherwise available.

The NYPSC since has applied this principle in establishing terms and conditions on all communications companies for the release of Automatic Number Identification (ANI). New York's ANI terms and conditions<sup>4</sup> information require prior written consent of the telephone subscriber if ANI-derived information is to be disseminated to any other parties.

## **II. Customers Should Enjoy A Presumption of Privacy**

Some of the comments cite the lack of complaints from residential and small business customers regarding the use of their CPNI as evidence that those customers do not believe their privacy interests are being infringed.<sup>5</sup>

Such suggestions in our view are misleading, and probably represent more a lack of sufficient consumer information as to

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<sup>3</sup> Case 90-C-0075, Statement of Policy on Privacy in Telecommunications, (Issued March 22, 1991).

<sup>4</sup> Cases 89-C-191 and 90-C-0165, Opinion and Order Approving Automatic Number Identification Terms And Conditions For All Communications Companies And Denying Petitions For Reconsideration. Opinion No. 94-9 (Issued March 30, 1994).

<sup>5</sup> See e.g., Comments of USTA, p. 8; United and Central Telephone Companies, p. 7.

the use of their CPNI, than a sign of customer indifference. In fact, since the Commission's existing CPNI safeguards do not require notification of customers with fewer than 20 lines, it is to be expected that most residential and small business customers are not aware of the privacy implications associated with the use of their CPNI. The evidence on CPNI notification requirements to date on multiline business customers suggests that when fully informed of their rights, a significant number of customers will choose not to permit release of their CPNI.<sup>6</sup>

Therefore, the presumption should be that residential and small business customers will have similar interests in the use of their CPNI. In fact, our experience in New York has demonstrated a strong customer interest in the use of information collected about them by their local telephone company. Several years ago, New York Telephone proposed to sell marketing lists comprised of information compiled from telephone company data. The company did not propose to include in the marketing list any more specific information than what is currently contained in directory listings. Information about customer calling habits or usage levels, credit ratings or locations was not to be included. Notwithstanding this limitation, some 800,000 residential customers requested that their information not be released and the company subsequently withdrew its proposal.

This example illustrates that when fully informed, customers

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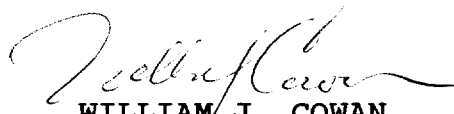
<sup>6</sup> See Comments of NYNEX, p. 6, note 8; "20% of NYNEX's multiline business customers receiving annual notifications have restricted the release of their CPNI. . ."

are sensitive to the release of information compiled about them by the telephone companies. We believe, therefore, that with respect to the release of CPNI information, all customers should enjoy a presumption of privacy and the should have ability to make informed decisions regarding the release of their CPNI.

#### CONCLUSION

The NYDPS urges the Commission to strengthen its CPNI rules by requiring all local exchange carriers to restrict access to their customers' CPNI -- irrespective of the number of lines to which a particular customer subscribes -- unless the customer authorizes its release.

Sincerely,



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Dated: May 13, 1994  
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CC Docket 90-263

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Proceedings Bell Operating Company Safeguards  
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CC Docket 92-256

Application of Open Network Architecture and  
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Corporation

Reply Comments of the  
New York State  
Department of Public Service  
On The Notice of Proposed Rulemaking

CERTIFICATE OF SERVICE

I, Penny Rubin, hereby certify that nine copies of the above-captioned proceeding were sent via Federal Express to Mr. Caton and by first class United States mail, postage prepaid, to all parties on the attached service list.



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CPNI

7110M CC DOCKET NO. 90-623/92-256 5/19/94

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TELEPHONE COMPANIES  
Jay C. Keithley  
1850 M Street, N.W.  
Suite 1100  
Washington, D.C. 20036

COX Enterprises, Inc.  
Werner K. Hartenberger  
J.G. Harrington  
Steven F. Morris  
Dow, Lohnes & Albertson  
1255 23rd Street, N.W.  
Suite 500  
Washington, D.C. 20037

NATIONAL EXCHANGE CARRIER  
ASSOCIATION, INC.  
Richard A. Askoff  
100 South Jefferson Road  
Whippany, New Jersey 07981

Telecommunications Resellers Assoc.  
Charles C. Hunter  
Kelly, Hunter, Mow & Povich  
7th Floor  
1133 Connecticut Ave., N.W.  
Washington, D.C. 20036

William F. Caton, Acting Secretary \*  
FEDERAL COMMUNICATIONS COMMISSION  
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